

Pergolizzi et al.; Serial No.: 08/479,995 (Filed June 7, 1995)
Page 71 [Second Supplemental Amendment To Applicants' July 7, 2005 Amendment
Under 37 C.F.R. §1.116 (Following Their September 20, 2005 Supplemental
Amendment And The October 19, 2005 Advisory Action)]
— October 21, 2005 —

REMARKS

After entry of the complete listing of the claims provided above, claims now pending in this application include 283-362, 364-365, 382-383, 400-401, 403-404, 406-407, 409-439, 441-505, 507-508, 510-511 and 528-547. Claims 366-381, 384-399, 402, 408 and 550-552 have been canceled without prejudice or disclaimer. No claims have been added by this paper. Entry of the above listing and claim amendments is respectfully requested.

Claim Cancellations

As indicated above, claims 366-381, 384-399, 402, 408 and 550-552¹ have been canceled in a sincere effort to remove the new matter rejection of these claims (35 U.S.C. §112, first paragraph)² and bring all of the pending claims into allowable condition.³ The cancellation of these claims is made without prejudice or disclaimer to Applicants' right to pursue the subject matter of these claims at a later time.

Early and favorable action on this application is respectfully sought.

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¹ It should be pointed out that claims 366, 370, 374-375, 379, 384, 388, 392-393, 397, 402 and 408 were canceled in Applicants' September 20, 2005 Supplemental Amendment. As astutely noted by the Supervisory Patent Examiner on page 2 in the October 19, 2005 Advisory Action, certain claims were left pending that depended from canceled claims. The SPE further noted on page 3 that "[t]he cancellation of NEW MATTER containing claims would have overcome this rejection if it [September 20, 2005 Supplemental Amendment] had been entered." Thus, in addition to removing the new matter rejection in this application, this paper seeks to correct the status of claims that otherwise depend from canceled claims, some of which include claims referred to in the October 19, 2005 Advisory Action, as well as other such claims which were uncovered by further examination of the listing of claims.

² See May 27, 2005 Office Action, page 4, first paragraph. See also September 8, 2005 Advisory Action, page 2, last paragraph, continuing through page 4, first paragraph. See also October 19, 2005 Advisory Action, pages 2-3.

³ By bringing all of the pending claims to an allowable condition, Applicants also seek to expedite processing of their Third Request For An Interference Pursuant To 37 C.F.R. §1.607 that was filed on July 23, 2003.

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SUMMARY & CONCLUSIONS

This paper follows the October 19, 2005 Advisory Action.

As set forth in the complete listing of the claims provided above, the pending claims in this application include 283-362, 364-365, 382-383, 400-401, 403-404, 406-407, 409-439, 441-505, 507-508, 510-511 and 528-547. CANCELED are claims.⁴ No new claims have been added by this paper.

No fee or fees are believed due in connection with the filing of this Second Supplemental Amendment, a Request For Extension Of Time (Two Months) having been earlier filed with Applicants' September 20, 2005 Supplemental Amendment.⁵ If any fee(s) are due, however, The Patent and Trademark Office is hereby authorized to charge the amount of any such fee to Deposit Account No. 05-1135, or to credit any overpayment thereto.

If the Supervisory Patent Examiner has any questions or requires further information, he is invited to contact the undersigned attorney.

Respectfully Submitted



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⁴ These claims are CANCELED without prejudice or disclaimer to Applicants' right to pursue the subject matter of these claims at a later date or opportunity.

⁵ With that two-month extension, the time for responding to the May 27, 2005 Office Action was extended to October 27, 2005. Thus, this paper (Second Supplemental Amendment) is being timely filed.

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